

Testimony of the
Financial Services Modernization NARAB Working Group
of the
National Association of Insurance Commissioners

Before the
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Government Sponsored Enterprises
of the
Committee on Financial Services
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Hearing on:
NARAB and Beyond: Achieving Nationwide Uniformity in
Agent Licensing

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Testimony of William J. Kirven III, Co-Chair NAIC Financial Services Modernization Working Group on NARAB

Introduction

Mr. Chairman and Members of the Subcommittee:

My name is Bill Kirven. I am the Commissioner of Insurance for the State of Colorado. I also serve as Chair of the Western Zone of the National Association of Insurance Commissioners (NAIC) and Co-Chair of the NAIC's Financial Services Modernization Working Group on NARAB.

NAIC created the NARAB Working Group in December 1999 to help States implement Subtitle C requirements in Title III of the Gramm-Leach-Bliley Act (GLBA). That subtitle requires State insurance regulators to meet Federal statutory requirements streamlining insurance agent licensing, and provides for establishing a new organization named the National Association of Registered Agents and Brokers (NARAB) if the States fail to achieve the goals set forth in Subtitle C. The mission of the NARAB Working Group is to coordinate State regulatory actions related to NARAB, so that the States can fully and promptly comply with all requirements in the Gramm-Leach-Bliley Act.

Let me start by saying the NAIC and State insurance regulators wholeheartedly support the licensing goals endorsed by Congress in NARAB. We do not, however, believe NARAB is necessary. Moreover, we believe the creation of NARAB as a separate organization would undermine the legal authority of State insurance departments to protect consumers throughout the United States. If NARAB were to prevent States from exercising their full range of powers to regulate insurance for the benefit of consumers, there would be nobody to perform this vital function.

Today, I would like to make three basic points regarding the response of State insurance regulators to NARAB –

- First, States are moving aggressively to implement the NARAB requirements in the Gramm-Leach-Bliley Act by doing the job ourselves as intended by Congress.
- Second, it is the goal of State insurance regulators to first achieve licensing reciprocity, and then continue moving forward to satisfy the larger goals of regulatory uniformity and efficiency that are embodied in Title III of GLBA. The NAIC and its non-profit affiliate, the National Insurance Producer Registry or NIPR (formerly the Insurance Regulatory Information Network or IRIN), have approximately 2.7 million of the Nation's three million agents in the Producer Data Base (PDB), and is targeting all 50 States to be online with PDB by year end 2001.
- Third, meeting the legal requirements and larger policy goals of NARAB will require prompt action by many interested groups, including State insurance regulators, State legislators and governors, Congress, and industry participants.

State Insurance Regulators Are Committed to Meeting the NARAB Requirements

During Congressional consideration of H.R. 10 and S. 900, proponents of NARAB argued that it should be included in the final law to spur needed changes in State laws and regulations affecting the licensing of insurance agents. The avowed purpose in adding NARAB to the financial services bill was to provide the States with a strong incentive to change, not to actually replace State insurance regulation with a Federally-established licensing organization. Accordingly, Congress did not hold hearings to scrutinize potential legal and operational problems likely to arise if NARAB came into existence.

The NAIC has long supported the same goals of efficient and uniform agent licensing as the proponents of NARAB. We anticipate that States will meet and exceed the short-term goal of meeting the NARAB reciprocity provisions in the Gramm-Leach-Bliley Act

within the three-year time allotted by statute. We plan to accomplish this goal by making necessary changes to the existing system of State insurance supervision so that NARAB will not need to be created as a separate organization. This approach will satisfy the objectives of NARAB supporters who want to see State regulation improved without additional Federal action.

The NARAB Standards for States – Reciprocity and Uniformity

Subtitle C provides the States with two approaches in attempting to avoid creation of a new NARAB organization. The first is for States to recognize and accept the licensing procedures of other States on a reciprocal basis so agents will not be required to meet different standards in each State.

In order to achieve reciprocity under the NARAB provisions, a majority of States and United States territories must have laws and regulations that guarantee reciprocal treatment for non-resident agents doing business in more than one State. The required reciprocity will be reached if a majority of States and territories:

- (1) Permit a producer licensed to sell insurance in his or her home State to sell in non-resident States after satisfying only minimum requirements such as submission of a licensing application and payment of all applicable fees;
- (2) Accept the satisfaction by a producer of his or her home State's continuing education requirements;
- (3) Do not limit or condition producers' activities because of residence or place of operations (except that counter-signature requirements are still permitted); and
- (4) Grant reciprocity to all other States meeting reciprocity requirements.

Alternatively, the States can avoid the creation of NARAB by adopting uniform laws and regulations regarding non-resident agent licensing. Laws and regulations will be deemed to be uniform under the NARAB provisions if the States:

- (1) Establish uniform criteria for integrity, personal qualifications, education, training, and experience of licensed insurance producers;
- (2) Establish uniform continuing education requirements;
- (3) Establish uniform ethics course requirements;
- (4) Establish uniform criteria regarding the suitability of insurance products for specific customers; and
- (5) Do not limit or condition producers' activities due to residency or place of operations.

NAIC Approach: Achieve Reciprocity Then Move Toward Uniformity

The Gramm-Leach-Bliley Act imposes a tight timeframe for States to comply with the NARAB provisions by giving us until November 2002 to achieve either reciprocal or uniform non-resident agent licensing. Although this sounds like a long time, in reality this is a fairly short period to develop and enact State laws. Most State legislatures meet briefly during annual or biennial sessions, which presents limited opportunities for them to process insurance laws along with addressing other pressing issues.

As a matter of practical strategy, State insurance regulators decided to implement a two-step process to comply with the NARAB provisions. The first step is achieving reciprocity among the States for non-resident agent licensing. Once reciprocity is achieved, we will continue working toward our real goal of uniformity, which is a greater challenge.

The mission of State regulators regarding agent licensing is clearly set forth in the "Statement of Intent" that was signed by 49 insurance commissioners at the NAIC national meeting in Chicago on March 12, 2000, as follows:

Streamlined Licensing for Producers

“We are committed to uniformity in producer licensing and will work to implement effective uniform producer licensing standards. As a necessary interim step, the NAIC adopted the Producer Licensing Model Act for consideration by State legislatures. This Model Act provides specific multi-state reciprocity provisions to comply with the requirements of the Gramm-Leach-Bliley Act.

“While reciprocity is a short-term answer, uniformity is the efficient, long-term solution. As a result, we have empowered the NAIC’s non-profit affiliate Insurance Regulatory Information Network (IRIN) [now re-named the National Insurance Producer Registry] to develop recommendations for a streamlined, national producer licensing process that will reduce the cost and complexity of regulatory compliance related to the current multi-state process. We believe that by leveraging work already done on the Producer Database and the Producer Information Network and by using [NIPR] as a central clearinghouse for non-resident licensing information, efficiencies will be realized that exceed expectations outlined in the National Association of Registered Agents and Brokers (NARAB) provisions of the Gramm-Leach-Bliley Act.”

The NAIC and NIPR have invested a great deal of time and resources over the past three years in modernizing the technical infrastructure to develop a centralized producer licensing processing center. Currently, the NAIC and NIPR maintain a complex network and centralized database of over 2.7 million of the Nation’s producers that is available to regulators and insurance companies over the Internet. This information is updated daily by automated processes at the State insurance departments.

Currently, 38 states are online with the Producer Database and the target is to have all 50 states contributing to PDB by year-end. Because PDB is intended to duplicate a significant part of the State licensing database, NIPR is creating a single system to

automatically process appointments, terminations, and uniform non-resident license applications on behalf of individual State insurance departments within 24 hours of receipt of the required electronic data from an insurance company or producer. This key milestone will bring about regulatory efficiencies that far exceed the expectations in NARAB and set the stage for uniformity.

Achieving Reciprocity and Uniformity with the Producer Licensing Model Act

Prior to passage of the Gramm-Leach-Bliley Act, the NAIC was working on an improved Producer Licensing Model Act to promote uniformity and efficiency among the States. We moved quickly to amend this model legislation to incorporate fully the NARAB reciprocity provisions in GLBA. Amendments to the Producer Licensing Model Act were completed in February and October of 2000 in order to make it available in time for consideration by State legislatures in 2001.

The NAIC's Producer Licensing Model Act is the primary vehicle for the States to fully implement the GLBA requirements for licensing reciprocity among States. Adoption of the Model Act by a majority of States will assure that we will be in compliance with the NARAB reciprocity provisions by November 2002. However, adoption and implementation of this model law will do much more than simply satisfy the minimum requirements of the Gramm-Leach-Bliley Act. It will create a foundation for achieving our ultimate goal of uniformity among the States for agent licensing.

Here are several areas where the Producer Licensing Model Act advances uniformity and efficiency in agent licensing –

- (1) The Model Act creates uniform definitions for “negotiate,” “sell,” and “solicit.” Many States currently use these terms to determine when someone needs to be licensed; however, State statutes and regulations often do not define these terms. In conjunction with these uniform definitions, the Model Act contains uniform exceptions to licensing requirements. These uniform

definitions and key exceptions will help companies (direct writers), agents, and consumer service representatives determine when an individual needs to be licensed as an insurance producer and eliminate inconsistencies.

- (2) The Model Act creates a uniform application process for both resident and non-resident applications by referencing the use of the NAIC Uniform Application for both resident and non-resident producers.
- (3) The Model Act establishes uniform definitions for the five major lines of insurance: Life, Accident and Health, Property, Casualty and Variable Life and Variable Annuity.
- (4) The Model Act establishes uniform exemptions from pre-licensing education and examination requirements for licensed producers who apply for a non-resident license.
- (5) The Model Act establishes uniform standards for license denials, non-renewals and revocations.
- (6) The Model Act establishes uniform standards regarding what entities may and may not receive a commission related to the sale of an insurance policy.
- (7) The Model Act establishes uniform standards for agent appointments. (The adoption of these provisions is optional for States.)
- (8) The Model Act establishes uniform procedures for regulators, companies, and agents to report and administratively resolve “not for cause” and “for cause” terminations.

- (9) The Model Act promotes use of the Producer Database (PDB), which will ensure its continued success. From a consumer protection standpoint, the use and success of the PDB is critical.

As a follow-up to achieving reciprocity, the NAIC will be building upon the improvements contained in the Producer Licensing Model Act to establish more uniformity and efficiency in State insurance regulation.

Adoption of the Producer Licensing Model Act – Current Status

The States are making great progress towards nationwide adoption of the Producer Licensing Model Act. As of late last week, 21 States have enacted new producer licensing legislation. Three of these States are pursuing additional legislation to achieve uniformity. In addition to the 21 states that have enacted legislation, four other States have passed bills that are awaiting signatures by their respective governors. Additionally, there are 15 States that have legislation pending. Another State plans on enacting the Model Act by regulation. To the best of our knowledge, the remaining States are either considering producer licensing legislation or planning for the next legislative session.

When one considers the number of licensed agents in those States that have thus far enacted producer licensing legislation, this accounts for almost one-third of all licensed agents in the country (or nearly 1 million out of 2.9 million). If we add in those States with bills awaiting their governor's signature and those States with pending bills in this legislative session, nearly 70% percent of the licensed agent population is covered. Some would argue that we should measure success in this effort by premium dollars on a per State basis, but we believe that is an inaccurate measuring stick. Looking at the States in terms of premium dollars does not accurately reflect the writing of multi-state risks, which generally have significant premiums.

The NAIC's NARAB Working Group, of which I am a Co-Chair, is currently monitoring the progress of the States' adoption of the Producer Licensing Model Act. In fact, the

Working Group is about to begin the process of reviewing State producer laws for compliance with the NARAB reciprocity standard. The review will be a careful and deliberate process which reflects the importance of this work. Based on our review, the Working Group will make recommendations to its parent body, the NAIC's Financial Services Modernization Task Force. Additionally, as part of our work, the Working Group is reviewing a small number of existing State law requirements concerning non-resident agent licensing, such as requirements for surplus lines bonds, trust accounts, etc. The purpose of this review is to determine whether these requirements fit within the NARAB reciprocity standard. If these licensing requirements are determined to fall outside the NARAB reciprocity standard, we anticipate those affected States should have sufficient time to address the issues in either their current or next legislative session. The Working Group is in the process of completing this review and making written recommendations to the Financial Services Modernization Task Force.

As spelled out in the NARAB provisions in GLBA, the NAIC is responsible for making a determination as to whether a majority of the States have achieved reciprocity. This determination will occur prior to the end of the three-year period following enactment of GLBA (or November 2002). We are optimistic that more than 29 States will meet the NARAB reciprocity requirement by November 2002. However, the NAIC will not be satisfied until all 50 States plus the District of Columbia and U.S. Territories meet the NARAB reciprocity standard. Even as States work to meet the reciprocity standard, they are working towards the next step in the process, which is achieving uniformity in producer licensing.

State Regulators are Relying on Help from Others to Comply with NARAB

The key to State compliance with the NARAB provisions in the Gramm-Leach-Bliley Act is adoption of the NAIC's Producer Licensing Model Act by the States. As regulators, we have started the process at the NAIC by developing the Model Act and revising it to meet the requirements of the Gramm-Leach-Bliley Act.

Many industry groups participated in drafting the modernization reforms contained in the Model Act. These include: Council of Insurance Agents and Brokers, National Association of Insurance Financial Advisors, Independent Insurance Agents of America, Professional Insurance Agents, National Association of Professional Surplus Lines Offices, Consumer Credit Insurance Association, National Association of Life Companies, American Council of Life Insurers, Alliance of American Insurers, American Bankers Association Insurance Group, Association of Banks in Insurance, National Association of Independent Insurers, and the American Insurance Association.

NAIC officers and members are reaching out to these insurance industry trade groups and companies to seek their continued support for adopting the Producer Licensing Model Act in the States. Industry representatives are active and influential in State government affairs. Having them join with regulatory officials in supporting the Model Act is critical to getting it enacted into law.

If the States are successful where producer licensing legislation is currently pending, nearly 75% of the licensed agent population in this country will be covered by reciprocity. We continue to strongly urge our legislators and governors to take all appropriate steps to comply with the NARAB provisions.

Although some have complained that the States are moving too slowly in adopting the Producer Licensing Model Act, we believe we have made significant progress towards achieving our goals in a short amount of time. Achieving regulatory efficiencies and uniformity in non-resident producer licensing in all States is a huge task but it remains a top priority of the NAIC and State insurance regulators. We are optimistic that we will meet our short-term objective of reciprocity, as well as our longer-term goal of uniformity.